

APR 13 2006

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMISSION  
SECRETARIAT

In the Matter of

MUR 5658

SARPY ELEPHANT CLUB, INC.

2006 APR 13 P 2:46

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

**SENSITIVE**

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal.<sup>1</sup> The

Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5658 as a low-rated matter. In this case the respondent, Sarpy Elephant Club, Inc. ("Sarpy"), distributed a flyer that contained federal, state, and local candidates running in the 2004 election. The complainant alleges that Sarpy was required to register and file disclosure reports as a political committee. Additionally, the flyer did not include an appropriate disclaimer indicating whether or not the federal candidates approved the listing. Sarpy attached a receipt to its response that indicated the total costs associated with the flyer were \$315. Moreover, Sarpy claimed that its flyer was permissible as a slate, sample ballot, or other type of listing pursuant to 2 U.S.C. § 431(8)(B)(v).

Based upon the evidence submitted by the respondent, it appears that Sarpy did not make expenditures amounting to \$1,000, which could have triggered registration and reporting obligations with the Commission. While Sarpy may not have fully complied with

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the Federal Election Campaign Act's disclaimer requirements, or with reports required under 2 U.S.C. § 434 (c), in light of the de minimis amount of the alleged activity and after a review of the merits of MUR 5658 in furtherance of the Commission's priorities and resources relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

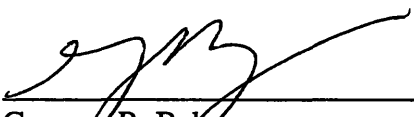
**RECOMMENDATION**

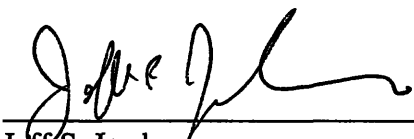
The Office of General Counsel recommends that the Commission dismiss MUR 5658, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

James A. Kahl  
Deputy General Counsel

4/13/06  
Date

BY:

  
\_\_\_\_\_  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
\_\_\_\_\_  
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Attachment:  
Narrative in MUR 5658

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4 **MUR 5658**

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6 **Complainant:** John G. Strawn

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8 **Respondents:** Sarpy Elephant Club, Inc.  
9 Patrick M. Shannon

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11 **Allegations:** The complainant alleges that the Sarpy Elephant Club, Inc. (aka the Sarpy  
12 County Republican Business Association), violated the Federal Election Campaign Act  
13 by distributing a flyer, which listed the names of federal candidates in addition to state  
14 and local candidates. Although the flyer included a disclaimer by the respondent, it did  
15 not state whether or not the federal candidates approved the listing. The complainant  
16 suggests that the respondent should have registered and reported to the Commission as a  
17 political action committee.

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19 **Response:** Sarpy Elephant Club, Inc., responded by indicating that it did not spend over  
20 \$1,000 on the flyer at issue. Specifically, Sarpy Elephant Club, Inc., attached a receipt to  
21 its response showing the total amount spent on the flyer at issue was \$315. Additionally,  
22 Sarpy Elephant Club, Inc., contends that the flyer in question listed several candidates  
23 under the heading of "Conservative Ticket," for the purpose of providing voter  
24 information, which it claims is permissible activity under 2 U.S.C. § 431(8)(B)(v and ix).

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26 **Date complaint filed:** May 13, 2005

27  
28 **Response filed:** June 13, 2005

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